IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.1271/2005

Reserved on: 29.10.2007

Decided on. 3.12.2007

Seema Devi. **…Petitioner**

Versus

Union of India & others. **…Respondents**

Coram

The Hon'ble Mr. Rajiv Sharma, J.

Whether approved for reporting?[1]*. Yes.*

For the petitioner : Mr. Ashutosh Burathoki, Advocate.

For the respondents: Mr. Sandeep Sharma, Assistant Solicitor General of India.

Rajiv Sharma, J.

The brief facts necessary for the adjudication of this petition are that the petitioner's husband late Shri Balbir Singh was enrolled in the Army on 31st March, 1998. He was posted to 20 JAK Rifles on 27th April, 1999. He was serving with 28 RR Battalion with effect from 25th November, 2001. He died on 9th August, 2003. The petitioner was sanctioned family pension on 28th June, 2004, but she was informed vide communication dated 15.2.2005 that she was not entitled to family pension after her re-marriage on 1st November, 2004.

The case set out by the petitioner is that she is entitled to Liberalized Family Pension Scheme as notified on 30th April, 2003 and contained in guide to service personnel, ex-servicemen, widows and dependents on benefits and concessions provided by Central Government and State Governments. The case of the respondents set out in the reply

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgment***? Yes.

is that since the petitioner's husband had committed suicide on 9th August, 2003, the petitioner cannot be granted liberalized family pension.

Mr. Ashutosh Burathoki, Advocate had strenuously argued that the petitioner's husband had not committed suicide on 9th August, 2003 and the possibility of his being killed in action cannot be ruled out since the area where he was posted is terrorists infested area. He has also assailed the findings of the court of inquiry proceedings ordered to investigate the circumstances, under which Sh. Balbir Singh had died on 9th August, 2003. He then contended that in the absence of forensic report of the weapon with which the alleged suicide was committed by Sh. Balbir Singh, the Inquiry Committee could not come to any definite conclusion as recorded.

Mr. Sandeep Sharma, Assistant Solicitor General of India had supported the findings recorded by the court of inquiry, which subsequently were agreed to by the Commander. Mr. Sharma further contended that since the petitioner's husband had committed suicide on 9th August, 2003, the instructions issued with regard to the liberalized family pension are not attracted and the decision of the competent authority to discontinue the family pension as communicated on 15th February, 2005 is in accordance with law.

I have heard the learned counsel for the parties and perused the record as produced by the respondents.

The facts which can be culled out from the pleadings of the parties are that the petitioner's husband late Sh. Balbir Singh while serving with 28 RR Battalion died on 9th August, 2003. The Court of inquiry was convened on the order of the Commander on 9th August, 2003 itself. During the course of proceedings, statement of Darshan Singh, Mauji Ram, Kulwant Singh, Swaran Singh, Balwinder Singh, Prakash BS, Gulam

Momhad Shah and G.C. Paul were recorded. The post-mortem report along with FIR (Ex.PC) were taken into consideration. Shri Darshan Singh, who appeared as witness No.1, had testified during the proceedings that late Sh. Balbir Singh was ear marked on 8th August, 2003 for duties at 216 Transit Camp. The questions and the answers put by the court to this witness read thus:

> **"Questions by the Court**
> **Q.1. When you asked the jawan if any one had any problems did No. 1376223Y Sep Balbir Singh tell you of any problems he had?**
> **Ans. No.**
> **Q.2 Was No. 1376223Y Sep Balbir Singh sowing any signs of depression?**
> **Ans. He was looking cheerful and normal.**
> **The above statement and questions by the court have been read to the individual in the language he understands best and signs it as correct."**

Witness No.2 Mauji Ram stated before the court that he had collected I/Cards and leave certificates of the Jawans who were detailed in 216 Transit Camp. The questions and answers put to him by the court read thus:

> **"Q 1. Was No. 1376223Y Sep Balbir Singh showing any sign of depression since the time of arrival?**
> **Ans. He seemed to be cheerful and normal.**
> **Q2. Did No. 1376223Y Sep Balbir Singh pick up a fight with any one or any such thing which was brought to your notice?**
> **Ans. No.**
> **The above statement and questions by the court have been read to the individual in the language he understands best and signs it as correct."**

Shri Kulwant Singh, who appeared as witness No.3 stated before the court that he briefed all the Jawans who were brought before him by Mauji Ram. The questions and answers put to him by the court read thus:

"Q 1. What all do you brief the guard parties?
Ans. I tell them how to conduct their duties and the security procedures to be followed at 216 Transit Camp.
Q2. Did No. 1376223Y Sep Balbir Singh tell you if he had any problems?
Ans. No.
Q.3. Was the guard carrying their weapons?
Ans. Yes.
Q4. From where are there weapons issued?
Ans. Weapons and Amn is issued from the Kote of the guards i.e. from the formation they are under.
The above statement and questions by the court have been read to the individual in the language he understands best and signs it as correct."

Shri Swaran Singh Gurad had appeared as witness No.4. He had testified before the court that he was given the charge of the guard at National Highway-2C post and after briefing duty NCO 19 Div, he took his guard next to the gate of 216 Transit Camp. He had given the details of the guards including late Sh. Balbir Singh as sentry No.4. He had further testified that he was to leave the previous guard at 10.30 hrs on the same day i.e. 9th August, 2003 and sentry No.1 and sentry No.2 were on duty when he heard a gun shot close by at approximate 1150 hrs and on checking he found Shri Balbir Singh missing and he reported the matter to the Hav Noonoo Gupta. He has deposed before the court that Sh. Balbir Singh had no problems and his morale was normal and he was not looking sad. Witness No.5 Shri Balwinder Singh had testified before the court that he was on sentry duty at National Highway-1 on 9th August, 2003 from 9 to 11 hours and he was to be relieved at 11 hours by the next

sentry but since all had gone for lunch, he could not be relieved on time. He heard a gun short at 11.50 hours and he saw lot of Jawans running in all the directions. He specifically stated before the court that after 10 minutes at 12 hours he had come to know that one jawan had got shot very close to him. The questions and answers put to him by the court read thus:

> **"Q 1. How far is the place from your post where sep. Balbir Singh got shot?**
> **Ans. The place is approx 30 yards from my post.**
> **Q2. How come you did not see the place where the incident happened?**
> **Ans. The exact spot is behind a tree which is not visible from my post.**
> **Q.3. The fire was so close why did you not look around?**
> **Ans. My duty was on a post and since I was alone I did not find it correct to leave a post unmanned.**
> **Q4. Did you see the jawan i.e. sep Balbir cross over from your post?**
> **Ans. No I was facing towards the road where as he crossed my post from my back..**
> **The above statement and questions by the court have been read to the individual in the language he understands best and signs it as correct."**

Sh. Prakash Singh appeared as witness No.6. He testified before the Court that he was checking the cable line near sentry post NH-1. He heard a gun shot fire very near to him. He immediately looked around towards NH-1 sentry post, but according to him every thing was normal. It was only when he looked around further he saw that one person has fallen down towards right side of NH-1 approximately 25 yards away from him. He reported the matter to OC 216 Transit Camp. According to his answer the sentry post from National Highway-1 where he was working was approximately 20-25 yards away.

Sh. Gulam Mohmad Shah, who appeared as witness No.7 testified before the Court that he heard a shot fired close-by and after 2-3 minutes, he found Balbir Singh missing and the matter was reported to RP Havaldar. According to him behaviour of Shri Balbir Singh was normal.

Shri G.C. Paul witness No.8 was directed to check the belonging of late Shri Balbir Singh and he found a few photographs and a note, which he handed over to the OC Provost Unit HQ 31 Sub Area. As per the post-mortem report conducted by Dr. Altaf Hussain it was a case of gun shot injury most probably suicide. The post-mortem was conducted on 10th August, 2003. Surprisingly there is no approximate time of death of Shri Balbir Singh noted in the post-mortem report. On the basis of the statement of the witnesses, the findings recorded by the Court of inquiry read thus:

> **"1. The Court is of the opinion that on 09 Aug. 03 at approx 1150h No. 1376233 Y Sep Balbir Singh of 28 RR committed suicide by shooting himself in his head with the weapon issued to him near sentry post NH-1 at 216 Transit Camp.**
>
> **2. There is no foul play or involvement of any second person in this incident. Forensic report of the weapon with which suicide was committed is still awaited."**

The conclusion drawn by the court of inquiry is that there was no foul play or involvement of any second person in the accident and Sh. Balbir Singh had committed suicide by shooting himself in his head with a weapon issued to him near a Transit Camp. The findings recorded by the court of inquiry were agreed upon by the Commander on 11th November, 2003.

Mr. Ashutosh Burathoki, Advocate had strenuously argued that without considering the forensic report of the weapon with which the alleged suicide was committed, the opinion of the court of inquiry was illegal and the same could not be agreed to by the Commander. There is

force in the submission made by Mr. Burathoki. The court of inquiry could not come to any definite conclusion that Shri Balbir Singh had committed suicide on 9th August, 2003 with the weapon issued to him without receiving and considering the forensic report. The Commander had approved the proceedings of the court of inquiry on 11th November, 2003. The forensic report as per the record produced during the course of hearing is dated 31st December, 2003.

Mr. Sandeep Sharma, Assistant Solicitor General of India submitted that the court of inquiry has come to just conclusion even without considering the forensic report that Shri Balbir Singh had committed suicide and according to him the forensic report though received late also suggests that the caliber of the live cartridge was the same i.e. 5.56 mm and the weapon was found in working condition. I do not agree with the submission of Mr. Sharma for the simple reason that the forensic report was perused and considered before coming to any conclusion with regard to death of Sh. Balbir Singh on 9th August, 2003. It has come in the statements of the witnesses whose testimony is discussed hereinabove that behaviour of Sh. Balbir Singh was normal and his morale was also normal. None of the witnesses has seen him shooting himself though most of them were in a close proximity to the sentry post where Sh. Balbir Singh was posted. The statements of most of the witnesses do not inspire confidence. The conclusion could not be drawn by the court of inquiry merely on the basis of one letter written by Shri Balbir Singh to his father suspecting the morality of his wife. The post mortem report is not in accordance with law. The post mortem examination on the victims of fire armed wounds is to be done in a very scientific manner by taking into consideration:-

(i) the cause of death by taking into consideration the total amount of tissue damage, vascular damage and haemorrhage;

(ii) the type of weapon used, i.e. rifle or smooth bore and if possible the caliber should be considered;

(iii) the number of discharges that have struck the body should be estimated;

(iv) the range at which the discharge took place should be estimated;

(v) the direction from which the shot or shots were fired relating to the body, both in the horizontal and vertical plane must be assessed; and

(vi) the height from heel level of the entrance wound and the exit would must be measured.

It is apparent from the post-mortem report that these above cited principles have not at all been taken into consideration by the Doctor who had conducted autopsy.

The Commandant had sent a communication to the SHO Police Station Lal Munshi Bag on 11th September, 2003 to return the weapon and ammunition. The same request was reiterated on 13th September, 2003. The authorities have only requested for the return of the weapon but had not insisted for the supply of the forensic report.

In totality, the only conclusion which can be drawn on the basis of the above discussion is that the Court of Inquiry had come to a wrong conclusion that the petitioner's husband had committed suicide on 9th August, 2003.

Consequently, the writ petition is allowed. The report of the court of inquiry as approved by the Commander on 11th November, 2003 and

Annexure P-8 dated 15.2.2005 are quashed and set aside. The respondents are directed to consider the case of the petitioner for liberalized family pension as per Annexure P-5 despite her re-marriage on 1st November, 2004 within a period of 8 weeks from today.

There shall be no order as to costs.

(Rajiv Sharma), J.

December 3, 2007
Awasthi